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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re G.W. et al., Persons Coming Under
the Juvenile Court Law.

MARIN COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

B.T.,

Defendant and Appellant.

A125686

(Marin County
Super. Ct. Nos. JV24697, JV24698, &
JV24699)

I. INTRODUCTION

These dependency actions involve three minor sons of B.T. (Mother), who appeals from jurisdictional and dispositional orders. She claims no substantial evidence supports the juvenile court's jurisdictional findings and the Marin County Department of Health and Human Services (Department) failed to comply with the Indian Child Welfare Act. (ICWA). (25 U.S.C. § 1901 et seq.) Department has filed a motion to dismiss, asserting the appeal is moot following the juvenile court's orders of June 1, 2010, terminating jurisdiction over all three minors and reunifying them with Mother. We address Mother's claim of lack of substantial evidence supporting the jurisdictional orders because it conceivably may affect future proceedings, and affirm the jurisdictional order. Mother's remaining claim on appeal is moot.

II. PROCEDURAL AND FACTUAL BACKGROUND

We set forth only those facts necessary to resolve the issues on appeal. On March 3, 2009, the Department filed dependency petitions regarding Mother's three minor sons, G.W., J.C., and S.T.¹ At the time the petitions were filed, the boys were 11 years, 6 years, and 17 months old, respectively. The petitions alleged the minors came within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivision (b), on the basis "[t]here is a substantial risk that the children . . . will suffer serious physical harm or illness by the willful or negligent failure of [Mother] to provide the children with appropriate food," "appropriate shelter," and "failure or inability of [Mother] to adequately supervise or protect the children" in that Mother was arrested on February 27, 2009, for child endangerment and currently incarcerated. The children were detained and placed with their maternal aunt. The family had a long history of referrals to the Department.

The juvenile court held a combined jurisdictional and dispositional hearing on May 19, 2009. Detective Ryan Petersen testified he was involved in executing a search warrant on February 27, 2009, at a residence where Mother and the three boys were living. He described the home as in "poor" condition. The kitchen was dirty and the refrigerator contained rotting, odiferous food. Animal feces were on the floor. The bedroom which Mother and the children shared was covered in rotting food, broken toys, dirty clothes and dishes, and smelled of urine. Petersen called Child Protective Services because it "appeared to [him] that the children were living in unsafe conditions. . . ."

A hidden doorway inside the closet in the family's bedroom led to a room being used to grow marijuana, then containing about 24 marijuana plants. G.W. described it as "the secret room" or "Jeff's working room."² Mother told Petersen she did not know the room existed. At the jurisdictional hearing, however, she admitted she was aware of the room and had seen the inside of it. The "secret room" had exposed electrical wires which

¹ Each boy has a different father. G.W.'s father is deceased, and neither J.C.'s nor S.T.'s father has appealed the court's orders.

² "Jeff" apparently referred to Jeff Nicoli, who also lived at the residence.

appeared to be an unfinished attempt to bypass the electrical meter, causing a fire hazard. PG&E turned off power to the residence as a safety precaution.

Karen Hebert, a social worker in the Department's emergency response unit, went to the home on February 27, 2009. The cupboard contained only two cans of food, two jars of baby food and some pasta. There was a gallon of milk in the family's bedroom. Both G.W. and J.C. told social workers they ate breakfast and lunch at school, but "sometimes" did not eat dinner or meals on the weekends because there was no food in the house. Mother testified she "was in the midst of an asthma attack" when social workers arrived on February 27, and her mother was "bringing our groceries." Mother usually got food from her mother and a food bank. On occasion, S.T.'s father brought some milk to them. Mother received about \$500.00 per month in food stamps. Mother was "tired of having to worry about who might be eating my things," so she did not keep much food at the residence. Mother agreed there was not enough food in the home at the time for an adult and three children.

When social workers arrived at the house, S.T. was barefoot, his feet were caked with mud, his hair was sticky and matted and he had a "foul odor." A social worker asked G.W. to get some shoes and socks for S.T., but he could not find any. The children sometimes had no clean clothing to wear to school. Two of the family's beds had sheets that were "visibly dirty," and one had no sheets. Social workers took the three boys to the hospital for a medical examination. S.T. appeared weak and listless, had a 102-degree fever, and a rapid heart rate. He was diagnosed with a respiratory infection.

Mother rented only the bedroom in the house in which the family was living. Jeff Nicoli and his brother John Nicoli also lived at the residence. "At [one] time" Mother had a social relationship with them, but by September or November of 2008, it began "to unravel" and she did not "have control over who was coming into my home." When police executed the search warrant on February 27, two men were smoking crystal methamphetamine in the house, and methamphetamine smoke was visible in the air of the residence.

At the time of the jurisdictional hearing, Mother testified she did “not have a home right now.” If the children were returned to her that day, she would provide food, clothing and shelter for them by having them live with her sister. She would not accept voluntary services from the Department if the court dismissed the case.

On May 19, 2009, the juvenile court found “as of February 27th there was not adequate food, clothing, and there was no adequate shelter for [the children.]” “There certainly is enough to say that there is inadequate food, clothing, and shelter at the time and there is a risk of that happening in the future unless jurisdiction is taken.” The court also stated “there is some suspicion” Mother was using drugs, but “[w]hether that’s a substance abuse problem or not . . . I’m not being asked to make that determination . . . [a]nd there is not enough evidence to do that.”

Mother timely appealed from the jurisdictional and dispositional orders.

III. DISCUSSION

A. Mootness

The Department has filed a motion to dismiss the appeal on the ground it is moot given the juvenile court’s June 1, 2010, order terminating jurisdiction.³ Mother opposes dismissal, claiming the order terminating jurisdiction is not final and consequently the claim of mootness is premature. She claims she has until August 2, 2010, to file a notice of appeal from that order and “agrees she should file such a notice in order to preserve this appeal.”⁴

An appellate court’s jurisdiction extends only to actual controversies for which the court can grant effective relief. (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) “In juvenile cases, when an issue raised in a timely notice of appeal continues to affect the rights of the child or the parents, the appeal is not necessarily rendered moot by the

³ The Department concurrently filed a request for judicial notice of certain records of the juvenile court, which we grant. (Evid. Code, § 452, subd. (d).)

⁴ The court in *In re Michelle M.* (1992) 8 Cal.App.4th 326, 330, observed in similar circumstances a parent’s remedy “was to attack the juvenile court’s order terminating jurisdiction in order to raise the issues he urges before us.”

dismissal of the underlying dependency proceedings. [Citation.] Rather, the question of mootness must be decided on a case-by-case basis.” (*In re Hirenia C.* (1993) 18 Cal.App.4th 504, 517-518.) An appeal in a dependency proceeding “is not moot if the purported error is of such magnitude as to infect the outcome of [subsequent proceedings] or where the alleged defect undermines the juvenile court’s initial jurisdictional finding.” (*In re Kristin B.* (1986) 187 Cal.App.3d 596, 605, italics omitted.) “We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.)

Mother maintains the appeal is not moot because the jurisdictional findings could affect her in the future if “these minors again come before a juvenile dependency court,” citing *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432. In that case, the juvenile court sustained the jurisdictional allegations, awarded the mother full legal and physical custody with monitored visits for the father with the minor’s consent, and then terminated dependency jurisdiction. (*Id.* at p. 1431.) On appeal, the court agreed the appeal was not moot because “the jurisdictional findings could affect Father in the future, if dependency proceedings were ever initiated, or even contemplated, with regard to the Minor or Father’s other children, if any.” (*Id.* at p. 1432.)

Mother’s assertion that the jurisdictional findings made here might similarly affect her rights in the future is speculative. However, out of an “abundance of caution,” we address her claim that no substantial evidence supports the court’s jurisdictional order. (See *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488-1489.)

We reach a different conclusion as to the ICWA issue Mother has raised on appeal.⁵ In her opposition to the motion to dismiss, Mother did not assert her ICWA claim remained extant. Any ICWA issue is moot because it has not “infect[ed] the outcome” of the dependency proceedings (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769) and no effective relief is possible given that the dependency proceedings have

⁵ Department’s request for judicial notice filed April 2, 2010, of documents relevant to the ICWA issue is likewise moot.

terminated and Mother has been granted custody of the children. (See *In re R.S.* (2009) 179 Cal.App.4th 1137, 1156.)

B. Substantial Evidence

Mother claims no substantial evidence supports the trial court's jurisdictional order, and accordingly the dispositional order must be reversed as well. When the sufficiency of the evidence to support a juvenile court's finding or order is challenged on appeal, we must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. We examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.)

Mother asserts the "court [based] its conclusion on mere speculation and/or perception of future risk—not a pattern of conduct or sufficient reason to believe neglectful acts would continue in the future." She claims the jurisdictional findings were erroneously based on her poverty alone, and it was only "speculation" that there was a substantial risk of harm to the minors. We disagree.

The evidence before the court showed the minors were living in a filthy house in circumstances manifestly unsafe for children. The room in which they lived was covered with dirty clothing and rotting food, and pieces of a broken mirror were in a pile of clothes. Others living in the home smoked crystal methamphetamine to such an extent that the air had visible methamphetamine smoke when police arrived on February 27. The residence contained a hidden marijuana growing operation⁶ accessible through a door in the family's bedroom closet. Mother testified she had no "control over who was coming into [the] home." Two of the children told social workers they ate breakfast and lunch at school, but sometimes had no meals at home because there was no food in the house. By Mother's own admission, the home lacked sufficient food for the family.

⁶ Though Mother's counsel asserted there was no evidence the marijuana cultivation was illegal, it was relevant to the overall safety of the home environment to which the children were subjected.

At the time of the jurisdictional hearing, Mother no longer lived in the residence where the family was found, but was homeless after leaving the Marin Services for Women treatment program. Mother stated she left the program because it did not “seem to be a competent facility.” Marin Services for Women indicated Mother was discharged after being “disruptive,” telling other residents the food was poisoned and going to unauthorized places while out on a pass.

Mother testified if the children were returned to her custody that day, she would provide them with food, clothing and shelter by having them live with her sister, but she would not accept voluntary services from the Department. Mother’s sister was willing to care for the children, but the Department required her to make modifications to her house before they could be placed there.

The court’s jurisdictional findings are supported by ample evidence. The findings regarding the inadequacy of the food, clothing and shelter for the children were not based on Mother’s poverty, but on the patent dangerousness of the home, Mother’s failure to allocate the resources available to her, or accept other resources offered, in order to provide for her children’s basic needs, and the resulting substantial risk that the children would suffer serious physical harm or illness as a result.

IV. DISPOSITION

The juvenile court orders from which Mother has appealed are affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.